

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION**

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FEDERAL TRADE COMMISSION,	*	
	*	Civil Case No. 11-3017
Plaintiff,	*	
	*	
v.	*	
	*	
PAYDAY FINANCIAL, LLC, et al.,	*	
	*	
Defendants.	*	

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**PLAINTIFF’S NOTICE OF SUPPLEMENTAL AUTHORITY IN OPPOSITION TO  
DEFENDANTS’ MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff Federal Trade Commission (“FTC”) hereby gives notice of supplemental authority in opposition to Defendants’ Motion for Partial Summary Judgment (Doc. No. 52) (“Motion for Summary Judgment”).

On October 23, 2012, the Kansas Office of the State Bank Commissioner issued an order, in a proceeding in which Defendants appeared through counsel, denying Defendants’ motion to dismiss and motion for summary judgment. (*See generally* Exhibit A.) Therein, the administrative law judge specifically found the following:

By Western Sky Financial’s activities of using the internet and television to solicit supervised lending activity in the State of Kansas, it knowingly solicited for and *conducted supervised lending activities in the State of Kansas* and subjects itself to the jurisdiction of the Kansas Office of State Bank Commissioner.

(*Id.* ¶ 8.) The judge determined that Western Sky Financial, one of the Defendants in this case, conducted business *in Kansas* by offering loans to

Kansas consumers via internet and television, even after recognizing that Western Sky Financial's offices are located within the Cheyenne River Sioux Reservation boundaries. (*Id.* ¶¶ 3, 8.)

This finding is further support for the FTC's contention that Defendants' loans are transacted outside of Defendants' tribal reservation for purposes of analyzing whether tribal courts may exercise subject matter jurisdiction in collections suits against non-tribal members. (See Docket No. 58 at 10-14.) As demonstrated in the FTC's opposition, and further supported in the attached Kansas order, Defendants' loans occur in the borrowers' states of residence and not on the tribal reservation, notwithstanding Defendants' decision to locate their offices and certain operations<sup>1</sup> within reservation boundaries.

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<sup>1</sup> Although the locus of Defendants' operations is not relevant for jurisdictional purposes (see Docket No. 58 at 8 and cases cited in notes 6, 7, and 9), Defendants base their motion, in part, on the assertion that Defendant's loans are funded from the reservation. See, e.g., Docket 60, p. 1 ("(3) the loans are electronically funded from the Reservation"). Defendants recently admitted during the deposition of Defendants' principal Martin Webb that some of Defendants' loans are funded from a Defendant's account at a bank located entirely outside of the reservation. (Defendants placed the entire transcript under seal; the FTC is prepared to submit the relevant excerpt under seal if the Court so requests.) This further undermines Defendants' position that their loans to out-of-state consumers occur on the reservation and therefore subject borrowers nationwide to suit in tribal court.

For the foregoing reasons and those stated in the FTC's opposition, the Court should deny Defendants' Motion for Summary Judgment.

Dated: October 26, 2012.

Respectfully submitted,

/s/ Michelle Grajales

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**FEDERAL TRADE COMMISSION**

CERTIFICATE OF SERVICE

I, Cheryl Schrempp DuPris, do hereby certify that on this 26th day of October, 2012, I caused copies of the foregoing Plaintiff's Notice of Supplemental Authority in Opposition to Defendants' Motion for Partial Summary Judgment to be served upon the following, via electronic filing, to-wit:

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